

AMENDED IN ASSEMBLY AUGUST 15, 2013

AMENDED IN ASSEMBLY AUGUST 6, 2013

AMENDED IN ASSEMBLY JUNE 27, 2013

AMENDED IN SENATE MAY 24, 2013

AMENDED IN SENATE APRIL 16, 2013

SENATE BILL

No. 570

Introduced by Senator DeSaulnier

February 22, 2013

An act to add Division 10.11 (commencing with Section 11999.40) to the Health and Safety Code, relating to alcohol and other drug counselors.

LEGISLATIVE COUNSEL'S DIGEST

SB 570, as amended, DeSaulnier. Alcohol and other drug counselors.

Existing law provides for the registration, certification, and licensure of various healing arts professionals. Existing law provides for various programs to eliminate alcohol and drug abuse, and states the finding of the Legislature that state government has an affirmative role in alleviating problems related to the inappropriate use of alcoholic beverages and other drug use.

This bill would require the State Department of Health Care Services, commencing January 1, 2015, to require each person who applies to an approved certifying organization to become registered or certified as an alcohol or other drug counselor (AOD counselor) or any AOD counselor who is registered or certified as of January 1, 2015, to ~~submit to a criminal background check~~ *obtain a criminal background clearance*, as specified. The bill would require the State Department of Health

Care Services to submit to the Department of Justice fingerprint images and related information for the purpose of obtaining information as to the existence of past criminal conduct, as specified. The bill would require the Department of Justice to obtain specified information from the Federal Bureau of Investigation with respect to an applicant's or AOD counselor's past criminal conduct, and to provide this information to the State Department of Health Care Services. The bill would require the Department of Justice to charge a reasonable fee *to an individual obtaining a criminal background check*, sufficient to cover the cost of processing the criminal background check request, *and would authorize the State Department of Health Care Services to establish a reasonable application fee to be charged to the certifying organization for each applicant or AOD counselor requesting a background check*. The bill would ~~authorize~~ *require* the State Department of Health Care Services, *by September 1, 2014, to establish* ~~adopt~~ regulations to implement the provisions described in the bill, ~~including establishing an application fee to be charged to the certifying organization for each applicant or AOD counselor requesting a background check as specified~~. The bill would require the State Department of Health Care Services to establish the Director's Advisory Panel, and *would require each prospective panel member to obtain a criminal background clearance, as specified*. The bill would authorize the panel to advise the department on the development of criteria for baseline decisions regarding AOD counselors, as these decisions relate to criminal background checks, ~~to review the results of criminal background results~~, and to make recommendations to the department regarding the criteria for disciplinary guidelines. The bill would require the department and approved certifying organizations to share specified information.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Division 10.11 (commencing with Section
- 2 11999.40) is added to the Health and Safety Code, to read:

DIVISION 10.11. ALCOHOL AND OTHER DRUG
COUNSELORS

11999.40. For purposes of this division, the following definitions apply:

(a) “AOD counselor” means a person registered or certified as an alcohol or other drug counselor by an approved certifying organization.

(b) “Approved certifying organization” means an organization that the department has approved to register ~~and~~ *or* certify AOD counselors.

(c) “Department” means the State Department of Health Care Services.

(d) “Director” means the Director of Health Care Services.

(e) “Panel” means the Director’s Advisory Panel established pursuant to Section 11999.43.

11999.41. (a) Commencing January 1, 2015, the department shall require approved certifying organizations to require each person who applies to become registered or certified as an AOD counselor ~~or~~ *and* any AOD counselor who is registered or certified as an AOD counselor as of January 1, 2015, to submit ~~to a criminal background check via LiveScan, identifying the department as the recipient fingerprint images via Live Scan for purposes of obtaining a criminal background clearance under this section.~~

(b) For persons described in subdivision (a), ~~and for prospective members of the Director’s Advisory Panel established in Section 11999.43,~~ the department shall electronically submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining both of the following:

(1) The existence and content of a record of state or federal convictions and state or federal arrests.

(2) Information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal.

(c) The Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from

1 the Federal Bureau of Investigation and compile and disseminate
2 a response to the department.

3 (d) The Department of Justice shall provide a state or federal
4 response to the department pursuant to subdivision (p) of Section
5 11105 of the Penal Code.

6 (e) The department shall request from the Department of Justice
7 subsequent notification service, as provided pursuant to Section
8 11105.2 of the Penal Code, for persons described in subdivision
9 (a) *and members of the Director's Advisory Panel.*

10 (f) The Department of Justice shall charge *the subject of the*
11 *criminal background check* a reasonable fee sufficient to cover
12 the cost *to the Department of Justice* of processing the ~~request~~
13 *requests* described in this section.

14 (g) *(1) For persons described in subdivision (a), the department*
15 *shall review all criminal background information received from*
16 *the Department of Justice and determine, based on the regulations*
17 *developed pursuant to subdivision (a) of Section 11999.42, whether*
18 *to deny an application or revoke a registration or certification*
19 *based on the criminal background information. The department*
20 *shall notify the individual's certifying organization of the*
21 *department's determination.*

22 *(2) The department may deny or revoke a registration or*
23 *certification pursuant to this subdivision only if the conviction of*
24 *a crime is substantially related to the qualifications, functions, or*
25 *duties of a registered or certified AOD counselor.*

26 (h) *An applicant or AOD counselor whose application is denied*
27 *or whose registration or certification is revoked pursuant to*
28 *subdivision (g) shall have the right to appeal the denial or*
29 *revocation in accordance with Chapter 5 (commencing with Section*
30 *11500) of Part 1 of Division 3 of Title 2 of the Government Code.*

31 (i) *The department may establish a reasonable application fee*
32 *to be charged to the certifying organization for each applicant or*
33 *AOD counselor requesting a background check pursuant to this*
34 *section, not to exceed the reasonable costs to the department of*
35 *implementing this division.*

36 ~~11999.42. The department may establish by regulation both of~~
37 ~~the following:~~

38 ~~(a) Criteria~~

39 ~~11999.42. (a) By September 1, 2014, the department shall~~
40 ~~adopt regulations to implement this division, which may include,~~

1 but ~~is~~ *are* not limited to, standards, exemptions, and terms of
2 rehabilitation for eligibility to become or to continue to be
3 registered or certified as an AOD counselor, including rebuttable
4 presumptions with respect to the acceptance or rejection of an
5 applicant or an AOD counselor with a prior criminal conviction.

6 ~~(b) A reasonable application fee to be charged to the certifying~~
7 ~~organization for each applicant or AOD counselor requesting a~~
8 ~~background check, not to exceed the reasonable cost of~~
9 ~~implementing this division.~~

10 *(b) In adopting regulations pursuant to this section, the*
11 *department shall convene and consult a stakeholder's group and*
12 *consult the Director's Advisory Panel established under Section*
13 *11999.43.*

14 *(c) The regulations described in subdivision (a) may be adopted*
15 *as emergency regulations. The adoption of these regulations is*
16 *deemed to address an emergency and to be necessary for the*
17 *immediate preservation of the public peace, health, safety, or*
18 *general welfare. Emergency regulations authorized by this*
19 *subdivision shall be exempt from review by the Office of*
20 *Administrative Law. However, the department shall transmit those*
21 *regulations to the Office of Administrative Law for filing with the*
22 *Secretary of State and publication in the California Code of*
23 *Regulations. Notwithstanding any other law, for purposes of*
24 *subdivision (e) of Section 11346.1 of the Government Code, the*
25 *180-day period, as applicable to the effective period of an*
26 *emergency regulatory action and submission of specified materials*
27 *to the Office of Administrative Law, is hereby extended to one*
28 *year, by which time the department shall have adopted permanent*
29 *regulations.*

30 11999.43. The department shall establish the Director's
31 Advisory Panel.

32 (a) The director shall select the members of the panel in
33 accordance with the following:

34 (1) Each panel member shall be a certified AOD counselor and
35 have at least five years of experience in alcohol and drug treatment
36 services.

37 (2) (A) Each *prospective* panel member shall submit to a
38 ~~criminal backgroundcheck via LiveScan for review by the director~~
39 ~~prior to being selected for the panel fingerprint images via Live~~
40 ~~Scan for criminal background clearance under Section 11999.41.~~

1 *If a prospective panel member has already submitted to a criminal*
2 *background clearance in his or her capacity as a certified AOD*
3 *counselor pursuant to subdivision (a) of Section 11999.41, that*
4 *criminal background clearance meets the requirement prescribed*
5 *by this subparagraph.*

6 *(B) Prior to selecting each member of the panel, the director*
7 *shall review the prospective member's criminal background*
8 *information.*

9 (b) The panel may do ~~all~~ *both* of the following:

10 (1) Consistent with any applicable regulations established
11 pursuant to Section 11999.42, advise the department on the
12 development of criteria for baseline decisions regarding AOD
13 counselors, as these decisions relate to criminal background checks.
14 These criteria may include, but are not limited to, ~~the circumstances~~
15 ~~that would warrant the automatic rejection of an applicant or AOD~~
16 ~~counselor and the circumstances that would allow for registration~~
17 ~~or certification of an applicant or AOD counselor, notwithstanding~~
18 ~~an applicant's or AOD counselor's prior criminal conviction.~~

19 ~~(2) Based on the criteria developed pursuant to paragraph (1),~~
20 ~~at the department's request, review an applicant's or AOD~~
21 ~~counselor's LiveScan results and provide a recommendation to~~
22 ~~the director regarding an applicant's or AOD counselor's~~
23 ~~qualifications to receive a registration or certification.~~

24 ~~(3)~~

25 (2) Make recommendations to the department regarding criteria
26 for disciplinary guidelines.

27 11999.44. An approved certifying organization shall do all of
28 the following:

29 (a) Report complaints made against an AOD counselor to the
30 department, and assist in documenting these complaints.

31 (b) Comply with the department's decisions regarding
32 disciplinary actions, including initial denial of a registration or
33 certification.

34 (c) Report any known criminal convictions of an AOD counselor
35 to the department.

36 11999.45. The department shall report any complaints made
37 to the department against an AOD counselor to the approved
38 certifying organization that conferred the individual's registration

- 1 or certification and assist that organization in documenting the
- 2 complaint.

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